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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

PERRY MORGAN, Plaintiff and Respondent, v. SOSA GRANITE & MARBLE, INC., Defendant and Appellant.	A122354 (Alameda County Super. Ct. No. RG04145338)

Defendant Sosa Granite & Marble, Inc., (Sosa Granite) appeals from an order denying its motion to vacate the default and default judgment entered against it by plaintiff Perry Morgan. We reverse the order and remand the matter for a determination of whether Sosa Granite is entitled to relief from default on equitable grounds.

I. BACKGROUND

In March 2004, plaintiff sued Naylor Avenue Investors (NAI), the owner of real property located adjacent to his property, seeking to quiet title to an easement, and asking for damages resulting from the alleged overuse and misuse of the easement. NAI's tenants on the property, including Sosa Granite, were also named as defendants.

In May 2004, a registered process server filed a proof of service of summons stating the summons, complaint and other documents had been served on Sosa Granite by leaving the documents at 526 Commerce Way in Livermore, with Amy Ivey, administrative assistant, "a person at least 18 years of age apparently in charge at the office or ususal place of business of the person to be served." The proof of service was

silent, however, as to the name of the *person* served on behalf of the corporation. Thus, the proof of service stated: "The 'Notice' to the person served' (on the summons) was completed as follows: [¶] (c) on behalf of: Sosa Granite & Marble Inc [¶] a corporation doing business as Sosa Tile [¶] under the following Code of Civil Procedure: [¶] 416.10 (corporation)"[1] No declaration of mailing was attached to this proof of service. In June 2004, a proof of service by mail was filed, stating that the summons and complaint and other documents were mailed to Sosa Granite at 526 Commerce Way in Livermore on April 30, 2004; this proof of service also failed to provide any name for the person being served on behalf of the corporation.

On June 24, 2004, plaintiff filed a request for entry of default against Sosa Granite. The proof of service reflected that a copy of the request to enter default had been sent to Sosa Granite, at the same Livermore address. Again, the mailing did not state the name of any individual; it was addressed solely to the corporation.

In 2005, and again in 2006, plaintiff attempted to secure a default judgment, but was unsuccessful. After a prove-up hearing on March 15, 2007, a default judgment was entered by the court against Sosa Granite in the sum of $355,000, plus $522.80 in interest. A copy of the application for an abstract of judgment was mailed to Sosa Granite on May 1, 2007. There is no proof of service attached to the abstract of judgment issued by the court, which is dated May 15, 2007.

Sosa Granite received the abstract of judgment in "late May" and Mario Sosa, its president, promptly contacted counsel. After locating the default judgment, Sosa Granite's lawyers called plaintiff's counsel, requesting that the default be set aside by stipulation because Sosa was unaware that Sosa Granite was a defendant and "knew nothing about the litigation." Sosa Granite's counsel never received a response to his final letter of August 21, 2007, and thereafter concluded that plaintiff would not agree to

[1] We have altered the capitalization used in the proof of service; otherwise, the proof of service is quoted as filed.

set aside the judgment.[2] On November 5, 2007, counsel secured a copy of the transcript of the prove-up hearing; and on November 26, Sosa Granite filed a motion to vacate both the default and the judgment and to quash service of summons pursuant to, inter alia, Code of Civil Procedure[3] sections 473.5 and 473, subdivision (d), and the court's equitable power to set aside defaults.

In support of the motion, Sosa declared that prior to late May 2007, he was unaware that Sosa Granite had been sued, and he had not been "told by anyone that Sosa Granite had received the [legal documents] in this action." He stated that Ivey "was a clerical worker at Sosa Granite . . . when Plaintiff claims she was given the Complaint." Sosa declared that "[Ivey] was not in charge of our office and was not authorized to state that she was. The only person who was to receive mail for Sosa Granite at that time was Maricela Espinoza. . . . Prior to 2004, I had instructed Ms. Espinoza to bring any legal documents to me immediately. I was not given a copy of the Summons and/or Complaint in April 2004 nor thereafter." Sosa stated that "[a]t no time did Ms. Espinoza give me any copy of the Summons or Complaint, or the Request for Entry of Default [and t]o my knowledge no such documents were received." Sosa declared that he "first learned of the Judgment towards the end of May 2007, when Sosa Granite received by mail a copy of an Abstract of Judgment obtained by Morgan." Sosa indicated that he was aware of a

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[2] While reviewing plaintiff's declaration in support of his default judgment Sosa Granite's counsel discovered the following statement: "On or about June 13, 2003, and repeatedly thereafter I gave notice to Sosa through his attorneys of the damage caused and being caused by the trespass . . . and requested their cessation and abatement, but Sosa has refused, and continues to refuse, to cease the trespass and abate the nuisance . . . ." Having never received any notice from plaintiff, Sosa Granite's attorney inquired concerning that statement. Plaintiff's counsel stated that although "Mr. Sosa was told of the many problems by Mr. Morgan on several occasions," the reference to "notice to Sosa through his attorneys" in June 2003 "and repeatedly thereafter" was in fact a single letter to the attorney for *NAI*, sent on June 13, 2003. In light of plaintiff's admission he had not, in fact, communicated with Sosa Granite's lawyers about the dispute, Sosa Granite's counsel again urged plaintiff to agree to set aside the default; they received no response.

[3] All further statutory references are to the Code of Civil Procedure.

dispute between plaintiff and NAI and/or its principal, John Whitsett, involving the rights over a driveway on plaintiff's property, that Whitsett had advised Sosa "he was dealing with this dispute," and that Sosa did not know a lawsuit was pending and "had no idea that Sosa Granite had been sued." Sosa's declaration also included testimony that would support a meritorious defense to the action.

Sosa Granite also submitted the declaration of Espinoza, Sosa's office manager. Espinoza stated that in April of 2004, Ivey was a clerical employee of Sosa; that she, Espinoza, was Ivey's supervisor; and that Ivey was required to report to Espinoza any legal documents delivered to Sosa. Espinoza further averred that prior to signing her declaration, she had been shown a copy of the summons, the complaint, two amendments to the complaint, and the request for entry of default; that Ivey never gave her any of those documents; that Ivey never mentioned receiving any legal papers; and that none of these documents were received in the mail at Sosa Granite's address.

Plaintiff opposed the motion and submitted a declaration from Espinoza in which she recanted her earlier sworn statement. She declared that in 2004, Ivey *did* hand her some documents regarding this case, that she immediately showed them to Sosa, and that Sosa's response was "something to the affect [*sic*] that it did not involve him since it had to [do with] Naylor Avenue properties." Espinoza stated that after receiving the first set of documents she received many more documents relating to this case through the mail, and kept them all in a stack on her desk; she reported receipt of these documents to Sosa, who appeared to be uninterested; and she tossed them out, per Sosa's instructions in December 2006, when Sosa Granite moved to a different location. The declaration provided no explanation for the dramatic change in testimony.

Plaintiff also filed a declaration from Ivey, stating that she (Ivey) recalled being served with the complaint in this action in March 2004, and that she personally handed the documents to Espinoza.

In reply, Sosa challenged the veracity of Espinoza's second declaration. He stated that following the execution of her first declaration Espinoza had been terminated after it

was discovered she had embezzled funds from Sosa Granite and had used a Sosa Granite credit card for personal purchases. Despite these grounds for termination, Espinoza applied for unemployment compensation, and Sosa opposed her application. According to Sosa, in late January of 2008, Espinoza came to Sosa's office and demanded a W-2 form. When Sosa told her she owed the company a lot of money, she responded " 'bring it on' " and, according to Sosa, indicated that she would take revenge.

Sosa Granite submitted two corroborating declarations. One was signed by Tony Bowden, the owner of the entity that provides payroll payment services to the company, who stated that Espinoza had paid herself a week's salary twice on five different occasions. The other was a declaration from Pamela Carter, an accountant at the firm handling Sosa Granite's tax and accounting matters. Carter stated that on a quarterly basis she would go to the offices of Sosa Granite to review financial records, and in so doing would regularly look through all of the documents on Espinoza's desk. She did this because "Ms. Espinoza had, on a number of occasions, failed to provide to me documents which were necessary to perform the accounting work undertaken by us, and had also misplaced documents." Carter stated that during the time Espinoza claimed the legal documents in the action were accumulating on her desk, Carter found no documents referring to this litigation.

The trial court set the matter for an evidentiary hearing and ordered that any party relying on a declaration of Espinoza must produce her at the hearing for examination by the court. The hearing took place on April 18, 2008.

At the hearing, Espinoza testified that she knew her first declaration was not true, but she signed it under penalty of perjury anyway because she was told it was just "a white lie" and it would help Sosa's case.

On the court's questioning she admitted that Sosa's accusation of embezzlement triggered her call to plaintiff's counsel regarding her declaration. She also admitted that she had paid herself a week's salary twice on four occasions, but stated that she did so because Sosa told her he would pay her to sign the declaration. This new assertion—

which was not mentioned in her direct testimony nor in her declaration—occasioned the trial judge to ask a series of probing questions and to admonish her regarding her oath. When asked if she had made the same assertion in her unemployment benefits application, she stated she testified to it before the administrative law judge; she then admitted, however, that it was not mentioned in the opinion issued by the Employment Development Department.

Ivey also testified. She essentially repeated what was in her declaration—that she had been served with the documents in this action and she delivered them to Espinoza—then added the fact that she had overheard a conversation in which Sosa said "it involved Naylor . . . Properties, and that that did not involve Sosa Granite & Marble." She further recollected that the name "Sosa Granite & Marble" was not "on the front of the papers." Although Ivey's declaration stated it was her "understand[ing]" that Espinoza delivered the papers to Sosa, she testified that she did not physically see that happen, but based it upon her overhearing the conversation; she therefore assumed "since the situation was being discussed, that he was aware of the paperwork." Ivey first heard about the controversy concerning the service of process from Espinoza, who called to ask her what she remembered; Ivey told her she remembered signing for some legal papers and giving them to Espinoza. She was not aware of the fact that there was a dispute between Espinoza and Sosa Granite regarding unemployment benefits nor that Espinoza had been accused of embezzlement, until much later, on the Monday prior to the hearing.[4]

Carter, the accountant, also testified and essentially reiterated what was in her declaration. She also stated that she did not believe Espinoza's second declaration because in May 2007, after the abstract of judgment had been received, Carter had a conversation with Espinoza and asked her whether she had known about the case and Espinoza stated "she had never heard about it before."

Sosa's testimony affirmed the facts in his declarations and provided additional detail. He testified that it was Espinoza who brought the abstract of judgment to his

[4] The hearing took place on a Friday.

attention, and she made no mention then that previous documents relating to the case had supposedly been received. After receiving the abstract of judgment, Espinoza and Sosa met with Sosa's attorneys and Espinoza again did not say she had received documents related to the action. At no time between 2002 and 2007 did Espinoza ever tell Sosa she had received documents pertaining to this action. At the time Espinoza signed her first declaration she did not tell Sosa it was inaccurate, and Sosa never promised her money to sign it. Sosa went on to describe how he discovered Espinoza's financial misdeeds. He also stated that, in the entire course of the unemployment benefits dispute, Espinoza never mentioned the alleged bribe by Sosa.

Sosa denied any conversation regarding the Naylor Properties lawsuit in 2004, as described by Espinoza and Ivey. He stated that he never saw any documents relating to this lawsuit until he received the abstract of judgment. He also testified that, although in his first declaration he believed there had been no service on Sosa Granite, he had no reason to disbelieve Ivey's testimony regarding delivery of the summons and complaint.

The parties submitted supplemental briefing, and the court thereafter issued its order denying Sosa Granite's motion. The court made factual findings that "the summons and complaint [were] delivered to Sosa, received by Ms. Ivey, and passed on to Ms. Espinoza," and that "Mr. Sosa received the documents . . . ." On these facts, the court concluded that there was "substantial compliance with the provisions of CCP [section] 416.10," and therefore "Sosa cannot establish that it merits relief under CCP section 473.5(c), which requires that the failure of actual notice not be caused by Sosa's own inexcusable neglect."

The court also found that "[t]he record supports Sosa's contention that had Mr. Sosa known of the litigation he would have informed his counsel and would have had no reason not to do so. However, the evidence establishes that Mr. Sosa simply did not recognize the significance of the documents. . . . It is the type of grounds that might well have supported a motion under [section] 473(b). However, . . . Sosa did not move under

that section, never averred that it was to blame for the failure to defend the action, and would have been untimely in any event."

Sosa Granite appealed.

II. DISCUSSION

A. Substantial Compliance with Section 415.20.

Sosa Granite disputes the trial court's factual finding that it actually received the summons and complaint when they were delivered to Sosa Granite, but concedes the finding is supported by substantial evidence. It nevertheless contends that there was no substantial compliance with section 415.20,[5] which requires two distinct steps to accomplish substituted service on a corporation—delivery of the summons to the office of the person to be served on behalf of the corporation (§ 416.10)[6] *and* a follow-up mailing to the person to be served.

With respect to the first step—the delivery portion of the substituted service—Sosa Granite argues it was defective because the proof of service does not reflect the name of any *person* authorized to be served on behalf of the corporation, as provided in section 416.10. It admits that the finding of actual receipt by Sosa cures that defective service, but only with respect to the delivery portion of the substituted service. Sosa Granite maintains that service of process was not completed, and therefore not

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[5] Section 415.20, subdivision (a) provides, in pertinent part, "[i]n lieu of personal delivery . . . to the person to be served as specified in Section 416.10, . . . a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office . . . with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. . . . Service of a summons in this manner is deemed complete on the 10th day after the mailing."

[6] As relevant here, section 416.10 provides that "[a] summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods: [¶] (a) To the person designated as agent for service of process . . . . [¶] (b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary . . . , a treasurer . . . , a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process."

effectuated, because the follow-up mailing was addressed only to Sosa Granite and not to *the person* to be served on behalf of the corporation, and there is no evidence the *mailed* service was actually received by one of the persons enumerated in section 416.10. Because substituted service is not deemed complete until the 10th day after the mailing (§ 415.20, subd. (a)), and because the mailing did not comply with the statute, service on Sosa Granite was never accomplished.

In support of this contention Sosa Granite relies primarily on *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426 (*Dill*). In *Dill*, the plaintiff served two out-of-state corporations by mailing the summons and complaint, addressed to each company, to the companies' offices, pursuant to section 415.40, which provides that "[a] summons may be served on a person outside this state . . . by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt." No name of the *person* to be served on behalf of the corporation was on either envelope. The return receipts were signed and returned. (*Dill*, at p. 1432.) The question was whether this service substantially complied with the provisions of the statute.

The court recognized that the statutory provisions regarding service of process should be liberally construed " ' " 'to effectuate service and uphold the jurisdiction of the court if actual notice has been received . . . ' " ' " (*Dill, supra*, 24 Cal.App.4th at pp. 1436-1437), and noted that a finding of substantial compliance could be made if it was shown that "despite [the] failure to address the mail to one of the persons to be served on behalf of the defendants, the summons was actually received by one of the persons to be served" (*id.*, at p. 1437). But the plaintiff was unable to prove that the summons was actually received by any person authorized to be served. Therefore, the court concluded, there was no substantial compliance, and the service was ineffective. (*Id.*, at p. 1439.)

Sosa Granite argues that the purpose of section 415.40 is the same as the purpose of section 415.20, and therefore the rationale of *Dill* applies here. "Since [the plaintiff] utterly failed to direct the summons toward any such individual [authorized to receive

service on behalf of a corporation], he cannot be held to have substantially complied with the statutory scheme." (*Dill, supra*, 24 Cal.App.4th at p. 1439, fn. 12.)

In response, plaintiff argues that *Dill* supports *his* contention that actual receipt of the summons and complaint by Sosa—a person authorized to receive service on behalf of the corporation—constituted substantial compliance. This "actual notice," plaintiff contends, satisfies both the delivery and mailing elements of the statutory requirements because the "objective of the service statutes were satisfied fully." Plaintiff's alternative contention is that there was proof of actual receipt by Sosa of the mailed summons based on undisputed testimony that Espinoza was the person at Sosa Granite who was authorized to receive and open mail, that Espinoza was instructed to directly report to Sosa any legal documents, and therefore she "would have . . . given [the mailed summons] to Mario Sosa." Moreover, plaintiff argues, Espinoza testified that "she received legal documents concerning the case below by mail and passed this information on to Mr. Sosa."

The legal issue presented is one of first impression—whether proof of actual receipt by an authorized person of a delivered summons is sufficient to cure any defects in the requisite follow-up mailing of the summons. Unfortunately, this issue was not raised below, and its resolution in the instant case involves disputed facts upon which no findings were made. Accordingly, we are precluded from adjudicating this question.

It is our natural inclination to grapple with questions of first impression in order to provide guidance to courts and litigants. This proclivity, however, is constrained by the proper role of an appellate court. It is clear that "[o]nly when the issue presented involves purely a legal question, on an *uncontroverted record and requires no factual determinations*, is it appropriate to address new theories [on appeal]. [Citations.]" (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847 (*Mattco Forge*).) To do otherwise " ' "would not only be unfair to the trial court, but manifestly unjust to the opposing litigant." [Citations.]' " (*Ibid.*)

No one disputes that this issue was not raised below. And, although Sosa Granite characterizes its new theory as a purely legal question, the record reflects otherwise. There was evidence that Espinoza was the person authorized by Sosa Granite to receive *all* mail, and that after delivering to Sosa the initial documents served on Ivey she received "more documents" relating to the case and "told Mario Sosa" about receipt of documents "concerning the Naylor Avenue properties . . . ." On the other hand, both Espinoza and Sosa *denied* that the mailed summons and complaint were received by anyone at Sosa Granite qualified under section 416.10 to accept service. This creates an issue of fact that must be determined in order to adjudicate the question of whether plaintiff substantially complied with the second part of section 415.20. This issue was not in the minds of the litigants or the court below, and therefore the court made no finding with respect to the mailing requirement of substituted service. Accordingly, it would be unfair both to the trial court and to plaintiff to consider this theory for the first time on appeal. (*Mattco Forge, supra*, 52 Cal.App.4th at p. 847.)

B. Availability of Equitable Relief

Sosa Granite's second argument is that the trial court erred in failing to decide whether the findings and evidence would support a motion to vacate the default and default judgment on equitable grounds. This contention has merit.

Three elements must be shown to justify equitable relief. As restated in *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982 (*Rappleyea*), they are: " 'First, the defaulted party must demonstrate that it has a meritorious case. Second[], the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Last[], the moving party must demonstrate diligence in seeking to set aside the default once . . . discovered.' [Citation.]"

There is no dispute with respect to two of the three elements. In satisfaction of the first element, Sosa Granite submitted extensive evidence supporting its claim of a meritorious defense, and its contention that the default judgment was entered based upon at least one misrepresentation of plaintiff. Plaintiff in his opposition neither denied nor

refuted this evidence, but focused solely on the issue of service of process. As to the requirement of diligence, the court made an express finding that Sosa Granite's motion was filed within a reasonable time, that the six-month delay was not unreasonable, and that no prejudice to plaintiff had been shown.

With respect to the remaining element—satisfactory excuse for not presenting a defense—Sosa Granite contends that the trial court could have granted the motion on equitable grounds based upon the findings it made. The trial court found that the failure of "actual notice" did not occur due to Sosa's excusable neglect, but it also found that the record "supports Sosa's contention that had Mr. Sosa known of the litigation he would have informed his counsel and would have had no reason not to do so. . . . [T]he evidence establishes that Mr. Sosa simply did not recognize the significance of the documents. . . . It is the type of grounds that might well have supported a motion under [section] 473(b)." The court concluded, however, that because Sosa Granite did not move under section 473, did not argue that its mistake was the cause of its failure to defend, and any motion under section 473 would have been untimely, its motion was denied. Sosa Granite contends the court erred in failing to decide whether the record would nevertheless support vacation of the judgment and default on equitable grounds.

Plaintiff contends the issue was decided by implication, based on two theories: (1) Sosa Granite did not request a statement of decision; where no statement of decision is requested it is presumed that every fact essential to the support of the "judgment" was found by the court; therefore it must be presumed that Sosa Granite's request for equitable relief was addressed and denied (citing *Mims v. Los Angeles Community College Dist.* (1981) 117 Cal.App.3d 352, 356 (*Mims*)). (2) The trial court found that Sosa's failure to respond to the action was not excusable neglect and was not the fault of plaintiff; therefore it must also have found that Sosa "did not articulate a satisfactory excuse for not presenting a defense to the action." We reject both contentions.

As a general rule parties are not entitled to a statement of decision on a motion. "Code of Civil Procedure section 632 requires the trial court to issue a statement of

decision 'upon the trial of a question of fact' when it receives a request therefor by a party appearing at trial. In general, however, section 632 applies when there has been a trial followed by a judgment. [Citation.] It does not apply to an order on a motion. [Citation.] This is true even if the motion involves an evidentiary hearing and the order is appealable. [Citation.]" (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040.) Plaintiff's reliance on *Mims* is misplaced; it involves the failure to request a statement of decision after a trial on a petition for writ of mandate. (*Mims, supra*, 117 Cal.App.3d at p. 356.) Plaintiff cites no authority—and we have found none—that entitles a party to request a statement of decision on a motion to set aside a default. Accordingly, we cannot here indulge the presumption that every fact essential to support a "judgment" was found by the court.

Regarding plaintiff's second contention, we agree the trial court made a determination that "the failure of actual notice [was] caused by Sosa's own inexcusable neglect." But this is not the equivalent of a finding that Sosa Granite is not entitled to equitable relief. As noted, it is incumbent upon the moving party to demonstrate a " 'satisfactory excuse' " for failing to respond to the action. (*Rappleyea, supra*, 8 Cal.4th at p. 982.) The trial court found that Sosa's neglect was "inexcusable" but went on to state that what Sosa did prove was "the type of grounds that might well have supported a motion under [section] 473(b)." Section 473, subdivision (b) permits a default to be set aside, in the court's discretion, on grounds of mistake, inadvertence, surprise, *or* excusable neglect. While the trial court ruled out the ground of excusable neglect, it did not rule out mistake, inadvertence, or surprise. It has been held that equitable relief can be ordered on grounds similar to relief under section 473, subdivision (b) where the statutory motion is untimely. (*Desper v. King* (1967) 251 Cal.App.2d 659, 662-664 ["section 473 does not act as a six-months' statute of limitations as to the grounds of 'mistake, inadvertence, surprise or excusable neglect' "].) Nor did the trial court consider other possible grounds for equitable relief such as extrinsic mistake. (See, e.g., *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47.)

In short, we cannot conclude as a matter of law that the trial court could not have decided that Sosa Granite was entitled to equitable relief, based upon the record as a whole. (See, e.g., *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855 [the policy of the law "looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary"].)

An application for relief from default on equitable grounds is addressed in the first instance to the sound discretion of the trial court; we conclude that the trial court failed to exercise that discretion, and we direct it to do so.[7]

[7] We can hardly fault the trial court for failing to address this issue. Although it was stated as one ground for the motion, it was barely mentioned in the moving party's supplemental brief. From the record it appears that once the second Espinoza declaration was filed, everyone become intensely focused upon the "actual notice" aspect of the case (governed by section 473.5).

III. DISPOSITION

The order is reversed and the matter is remanded for further proceedings consistent with this opinion.[8]

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RIVERA, J.

We concur:

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RUVOLO, P.J.

_____
REARDON, J.

[8] Plaintiff notes that Sosa Granite has filed a separate action (*Sosa Granite & Marble, Inc. v. Morgan* (Super. Ct. Alameda County, No. RG08377119)) asking for "the very same equitable relief from the default and default judgment it sought in the action below." Plaintiff has requested that this court provide guidance regarding Sosa Granite's request for equitable relief in this matter so plaintiff "will not need to address this very same issue again in the new action." We cannot provide such guidance because we have no way of ascertaining whether the issues in the two cases are the same in any or all respects. In any event, the request is more properly addressed to the trial court.